

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.225

CRR-1661-2022 (O&M)
Date of decision : 9.12.2022

Rakesh Bhatia

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.JS Toor, Advocate for the petitioner
Ms.Aditi Girdhar, AAG, Haryana
Mr.Shailendra Sharma, Advocate for respondent No.2
Ms.Varsha Sharma, Advocate for the LRs of the deceased

AMAN CHAUDHARY, J.

1. The present revision petition has been filed challenging the judgment dated 01.08.2022, passed by the learned Additional Sessions Judge, Karnal, dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 06.05.2019, rendered by the learned Judicial Magistrate, 1st Class, Karnal, vide which he had been convicted and sentenced as under:

Offence u/s	Imprisonment	Fine	In default of payment of fine
279 IPC	RI for 3 months	-	
337 IPC	RI for 6 months	-	-
338 IPC	RI for 1 year	-	-
304A IPC	RI for 1 year	Rs.1000/-	One month

All the sentences were ordered to run concurrently.

2. Briefly put, the prosecution case is that one Dinesh Kumar made a statement to the effect that while going to Alwar in his car on 18.04.2014, when he reached near Aahuja Petrol Pump, Kohand, a car coming behind him hit a person, who was crossing the road and thereafter, it hit behind his car, due to which his car rolled on the side of the road. The person to whom, the car had hit fell down and died at the spot. Later on, he came to know the registration number of the car as PB-10E-D-9910 and the name of the driver as Rakesh s/o Mulkhraj. On the said statement, FIR No.382 dated 18.7.2014, under Sections 279, 337, 338, 304A, 427 IPC was registered at Police Station Gharaunda, Karnal.

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused- petitioner. On finding a prima facie case, charges under Sections 279, 337, 338 and 304-A of the IPC were framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to bring home the guilt of the accused examined as many as 11 PWs. On closure of the prosecution evidence, statement of the accused-petitioner was recorded under Section 313 of the Cr.P.C.. He denied all the incriminating circumstances that appeared against him in the prosecution case while pleading false implication by the police. He, however, did not examine any witness in his defence.

5. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused as noticed in para 1.

6. Against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Additional Sessions

Judge, Karnal, which was dismissed vide judgment 01.08.2022, affirming judgment of the trial Court.

7. Aggrieved accused-petitioner, has preferred the present revision petition.

8. Learned counsel for the petitioner, at the very outset, gives up his challenge to his conviction, however, prays for modification of the order of his sentence awarded to the period as already undergone on account of the facts, namely; he is suffering from a fracture of shaft of humerus right side, due to which he is unable to use upper limb and not even able to do his daily chores; is the sole breadwinner of his family; undergone 1 months 7 days, out of the total sentence of 1 year as awarded to him; he has also faced agony of trial since the date of incident i.e. 18.7.2014 and is a first offender. It is his further submission that at the time of preliminary hearing of the case, the learned counsel for the petitioner on instructions stated that he wanted to compensate the family of the deceased.

9. Opposing this, the learned counsel for the State submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioner, therefore, he prays for the dismissal of the present petition. As per the custody certificate dated 7.9.2022, issued by Deputy Superintendent of Prison, District Prison Karnal, filed by the learned counsel for the State, as per which, the petitioner has undergone 1 month and 7 days.

10. Heard.

11. Though, the petitioner has given up his challenge to the conviction and has prayed for reduction of his sentence as having been

undergone, in view of the mitigation circumstances as mentioned above. However, still this Court deems it appropriate to examine the judgments of the Courts below. The learned trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the petitioner on the basis of the testimony of the eye witness/ complainant-PW11, Dinesh Kumar, who had stated that after seeing the pedestrian crossing the road, he slowed down the speed of his car, but the offending vehicle, which was being driven by the accused, came from the back side and hit his car, which went on the other side of the road after crossing the divider and then it hit the pedestrian. The Court noticed the fact that the pedestrian had not suddenly appeared on the road but as stated by the complainant, he was crossing the road, but if the complainant could have slowed his car, so could the accused, had his car been in controlled speed. But since the accused could not control his car, the accident was caused, which proved him to be driving in a rash and negligent manner. Learned Additional Sessions Judge in appeal filed by the petitioner had also considered all aspects of the matter and only thereafter, upheld the judgment of the conviction passed by the learned Trial Court and observed that the accused was not maintaining safe distance from the car ahead of him. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioner and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioner is affirmed.

12. Regarding the prayer of the learned counsel for the petitioner that in view of the aforesaid mitigating circumstances, the sentence of the

petitioner may be reduced to the period already undergone, it is apposite to make a reference to the judgments of Hon'ble The Supreme Court of India in the case of **K.Jagdish vs. State of Karnataka 2018 SCC OnLine SC 2489** wherein it was observed thus:-

“We direct that subject to the petitioner depositing a sum of Rs.4,00,000/- in this court and furnishing bail bonds in a sum of “Rs.20,000/- with one surety in the like amount to the satisfaction of the trial court, the petitioner shall be enlarged from custody and sentence awarded to him shall remain suspended.” Pursuant to the aforesaid order, a sum of Rs.4,00,000/- has been deposited and that has been withdrawn by the respondent No.2- the complainant. It is stated at Bar that it is in addition to the amount of Rs. 5,00,000/- that was awarded in the death claim case in the MACT matter in Lok Adalat settlement.

In view of the aforesaid order of depositing Rs.4,00,000/-that was passed by this Court and also the fact that the appellant was directed to surrender vide order dated 10.5.2013, he surrendered on 19.6.2013. Then was released on bail on 1.7.2013.

He has undergone sentence for about 2 weeks and in addition, he has paid the aforesaid amount of 4 lakhs. Thus, the sentence of imprisonment is reduced to the period already undergone in view of the monetary compensation of 4 lakhs that has been paid by the appellant and withdrawn by the respondent No.2 and fine of 2,000/- imposed has also been deposited.

Thus, the sentence of imprisonment is accordingly modified.”

14. In the case of **Haripada Das vs. State of W.B. (1998) 9 SCC 678**, Hon'ble The Supreme Court of India has held as under:

“....considering the fact that the respondent had already undergone detention for some period and the case is pending for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone....”

15. The observations as relevant to the present case, made by

Hon'ble The Supreme Court in the case of **R.Soundarajan vs. Seed Inspector, Coimbatore and another**, 2006(4) RCR (Crl.) 645 read thus:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

16. It is settled proposition of law that each case is to be decided on its own peculiar facts and circumstances.

17. Adverting to the mitigating circumstances, as brought out by the learned counsel for the petitioner in the present case, inasmuch as the petitioner has an ailing wife, a school going child; is himself also suffering from a fractured shaft of humerus right side, due to which he is unable to use upper limb and not even able to do his daily chores; the LRs of the deceased have been compensated, besides, which he having undergone a period of sentence of 1 months 7, out of a total sentence of 1 year awarded to him and the fact that the petitioner, who is a first offender, has faced the pangs of a prolonged trial and in view of the judgments referred to above, this Court is of the considered view that the ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

18. Accordingly, the conviction of the petitioner is upheld while modifying the order of sentence to the period already undergone by

petitioner. However, fine shall remain intact but the amount deposited with the Registry by the petitioner in lieu of compensation i.e. Rs.1.30 lakh be disbursed to the legal heirs of the deceased. The petitioner was ordered to be released on interim bail vide order dated 8.9.2022, thus, his bail bonds shall stand discharged.

19. With the aforesaid modification in the order of sentence dated 6.5.2019 , the criminal revision petition is partly allowed.

9.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No